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5-31-01
CLOSED

U.S. District Court
Western District of Pennsylvania (Pittsburgh)

CIVIL DOCKET FOR CASE #: 00-CV-1517

PETERSON v. SCI CAMP HILL

Filed: 08/07/00

Assigned to: Judge Donald E. Ziegler

Referred to: Mag. Judge Kenneth J. Benson

Demand: \$0,000

Nature of Suit: 550

Lead Docket: None

Jurisdiction: Federal Question

Dkt# in other court: None

Cause: 42:1983 Prisoner Civil Rights

1 : CV 01-0972

CHRISTOPHER LEROY PETERSON
plaintiff

CHRISTOPHER LEROY PETERSON
EE-5357
[COR LD NTC] [PRO SE]
SCI Rockview
Box A
Bellefonte, PA 16823

FILED
SCRANTON

MAY 31 2001

~~1444~~
PAR
~~DEPUTY CLERK~~

v.
SCI CAMP HILL
defendant

Gregory R. Neuhauser
[COR LD NTC]
Seth A. Mendelsohn
(717) 787-1194
[COR LD NTC]
Office of the Attorney General
Strawberry Square
15th Floor
Harrisburg, PA 17120
(717) 705-8572

Proceedings include all events.

2:00cv1517 PETERSON v. SCI CAMP HILL

CLOSED

8/7/00 1 MOTION by CHRISTOPHER LEROY PETERSON to Proceed in Forma Pauperis with Proposed Order. (emc) [Entry date 08/07/00]

8/7/00 -- Complaint Received from Plaintiff (emc) [Entry date 08/07/00]

8/7/00 -- CASE REFERRED to Mag. Judge Kenneth J. Benson (emc) [Entry date 08/07/00]

8/18/00 2 ORDER granting [1-1] Motion to Proceed in Forma Pauperis. The payment of the initial partial filing fee is held in abeyance. The Clerk shall file the Complaint without payment of the initial partial filing fee. The agency having custody of the Plaintiff shall forward to the Clerk payments from the prisoner's account in an amount of 20% of the preceding month's income credited to the prisoner's account each time the amount in the account exceeds \$10.00 until the full filing fee is paid. (signed by Mag. Judge Kenneth J. Benson on 8/18/00) CM all parties of record. (emc) [Entry date 08/21/00] [Edit date 08/23/00]

8/18/00 3 COMPLAINT (emc) [Entry date 08/21/00]

8/23/00 4 AUTHORIZATION by CHRISTOPHER LEROY PETERSON permitting withdraw of prison account funds to pay filing fee. (emc) [Entry date 08/23/00]

8/30/00 5 ORDER, that the U.S. Marshal is directed to mail a copy of the complaint, notice of lawsuit, request for waiver of service of summons, waiver, and this Order to the defendant as directed by plaintiff. Costs shall be advanced by the United States. Parties have 10 days to file Appeal to District Judge. (signed by Mag. Judge Kenneth J. Benson on 8/30/00) CM all parties of record. (emc) [Entry date 08/30/00]

8/30/00 -- 3 cc of above Order, 1 copy of Complaint and 1 285 Form forwarded to U.S. Marshal for Service (emc) [Entry date 08/30/00]

9/21/00 -- PARTIAL PAY of filing fee by CHRISTOPHER LEROY PETERSON Amount \$ 1.14 Receipt # 8710 (emc) [Entry date 09/21/00]

10/11/00 6 MOTION by SCI CAMP HILL to Dismiss the Complaint or to Transfer Case for Improper Venue with Proposed Order. (emc) [Entry date 10/11/00] [Edit date 10/16/00]

10/11/00 7 BRIEF by SCI CAMP HILL in support of [6-1] Motion to Dismiss the Complaint by SCI CAMP HILL, [6-2] Motion to Transfer Case for Improper Venue by SCI CAMP HILL (emc) [Entry date 10/11/00] [Edit date 10/16/00]

Proceedings include all events.

2:00cv1517 PETERSON v. SCI CAMP HILL

CLOSED

10/12/00 8 ANSWER by CHRISTOPHER LEROY PETERSON to [6-1] motion to Dismiss to Complaint by SCI CAMP HILL, [6-2] motion to Transfer Case for Improper Venue by SCI CAMP HILL (jsp) [Entry date 10/12/00]

10/19/00 9 WAIVER OF SERVICE Returned Executed as to SCI CAMP HILL on 9/12/00 Answer due on 11/11/00 for SCI CAMP HILL (emc) [Entry date 10/19/00]

10/26/00 -- PARTIAL PAY of filing fee by CHRISTOPHER LEROY PETERSON Amount \$ 4.72 Receipt # 366 (emc) [Entry date 10/26/00]

11/17/00 -- PARTIAL PAY of filing fee by CHRISTOPHER LEROY PETERSON Amount \$ 4.74 Receipt # 754 (emc) [Entry date 11/17/00]

3/16/01 -- PARTIAL PAY of filing fee by CHRISTOPHER LEROY PETERSON Amount \$ 7.14 Receipt # 2570 (emc) [Entry date 03/19/01]

4/18/01 -- PARTIAL PAY of filing fee by CHRISTOPHER LEROY PETERSON Amount \$ 9.30 Receipt # 3014 (emc) [Entry date 04/19/01]

5/7/01 10 REPORT AND RECOMMENDATION of Mag. Judge Kenneth J. Benson signed on 5/7/01 Recommending that [6-1] motion to Dismiss the Complaint be denied, [6-2] motion to Transfer Case for Improper Venue be granted ; The parties have 10 days from the date of service to file objections to this Report and Recommendation. (ka) [Entry date 05/07/01]

5/21/01 -- PARTIAL PAY of filing fee by CHRISTOPHER LEROY PETERSON Amount \$ 10.48 Receipt # 3567 (ka) [Entry date 05/21/01]

5/29/01 11 ORDER denying [6-1] motion to Dismiss the Complaint, granting [6-2] motion to Transfer Case for Improper Venue, adopting [10-1] report and recommendations (signed by Judge Donald E. Ziegler on 5/29/01) CM all parties of record. (ka) [Entry date 05/29/01]

5/29/01 -- Case closed (ka) [Entry date 05/29/01]

5/29/01 -- Case Transferred to Middle District of Pennsylvania (ka) [Entry date 05/29/01]

CERTIFIED FROM THE RECORD	
Date:	May 29, 2001
JAMES A. DRACH, CLERK	
By:	<i>Keith A. Anderson</i>
Deputy Clerk	

26
OA

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CHRISTOPHER LEROY PETERSON,

CASE CLOSED

Plaintiff,

v.

Civil Action No. 00-1517

SCI CAMP HILL,

JUDGE ZIEGLER

Defendant.

MAGISTRATE JUDGE BENSON

MEMORANDUM ORDER

11
KSA

Plaintiff's complaint was received by the Clerk of Court on August 7, 2000, and was referred to United States Magistrate Judge Kenneth J. Benson for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. §636(b)(1), and Local Rule 72.1.4.

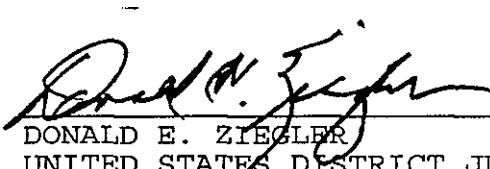
The magistrate judge's report and recommendation, filed on May 7, 2001, recommended that defendant's motion to dismiss the complaint or to transfer the action for improper venue (Docket No. 7) be denied to the extent that it seeks dismissal of the complaint and granted to the extent that it seeks transfer of this action to the United States District Court for the Middle District of Pennsylvania under 28 U.S.C. §1404(a). The parties were allowed ten (10) days from the date of service to file objections. Service was made on plaintiff on May 9, 2001, by certified mail delivery to the State Correctional Institution Rockview at Bellefonte, Pennsylvania, where he is incarcerated, and on counsel for defendant by first-class mail on May 7, 2001. No objections have been filed. After review of the

pleadings and documents in the case, together with the report and recommendation, the following order is entered:

AND NOW, this 29th day of May, 2001;

IT IS HEREBY ORDERED that defendant's motion to dismiss the complaint or to transfer the action for improper venue (Docket No. 7) is denied to the extent that it seeks dismissal of the complaint and granted to the extent that it seeks transfer of this action to the United States District Court for the Middle District of Pennsylvania under 28 U.S.C. §1404(a). The complaint shall be transferred forthwith.

The report and recommendation of United States Magistrate Judge Kenneth J. Benson, dated May 7, 2001 (Docket #10), is adopted as the opinion of the court.


DONALD E. ZIEGLER
UNITED STATES DISTRICT JUDGE

cc: Honorable Kenneth J. Benson
United States Magistrate Judge

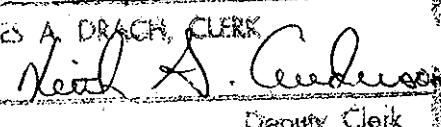
Christopher Leroy Peterson, EE-5357
SCI Rockview
Box A
Bellefonte, PA 16823

Seth A. Mendelsohn, Esquire
Deputy Attorney General
Gregory R. Neuhauser, Esquire
Senior Deputy Attorney General
Office of the Attorney General
15th Floor, Strawberry Square
Harrisburg, PA 17120

CERTIFIED FROM THE RECORD

Date May 29, 2001

By JAMES A. DRACH, CLERK


James A. Drach
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Christopher Peterson
(Plaintiff)

**MOTION AND DECLARATION IN SUPPORT
OF MOTION TO PROCEED IN FORMA PAUPERIS**

43

S.C.I. Camp Hill
(Defendant)

(Defendant)

00 1517

Chris Peterson

I, Chris Peterson, am the plaintiff in the above entitled case. In support of my motion for leave to proceed in forma pauperis I state that because of my poverty I am unable to pay the initial costs of said proceeding or to give security therefore and that I believe I am entitled to redress. In support of this motion I declare the following responses are true.

1. If you are receiving prison wages, state the amount 515.76
2. If you received within the past twelve months any money from any source, explain, and state the amount:
3. State the amount of money you have in a checking, savings or prison account 188.17
4. Identify and state the value of any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing) which you own
5. List the persons who are dependent upon you for support; state your relationship to those persons; and indicate how much you contribute toward their support.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 22 day of May 192008

•  •

(Plaintiff's Signature)

(Plaintiff's Signature)

TO BE COMPLETED BY RECORDS OFFICER OF PRISON

1. The plaintiff presently has the sum of .02¢ on account at
Rockview State Correctional Institution
(Name of Prison)

xxxx

Attached is a copy of the plaintiff's institutional account indicating deposits and withdrawals during the preceding one year period or
3/23/00 - 8/2/00

(Indicate period covered by Account)

I cannot furnish the court with a copy of the plaintiff's institutional account indicating income and withdrawals because

2. The plaintiff has the following securities and other assets: (include any information you have regarding outside accounts, sources of income).

NONE

3. Other information relevant to plaintiff's financial status or information that plaintiff's statements contained in his motion and declaration in support of motion to proceed in forma pauperis are not true.

NONE

I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge, information and belief.

Signed this 2nd day of August X9 00

RE: EE5357 Peterson, Christopher

Carl Walker

Signature and Title of Records Officer of Prison
Earl Walker
Clerical Supervisor 2, Inmate Acctg.

ORDER

Motion for leave to proceed in forma pauperis _____

United States District Judge -or-
United States Magistrate Judge

Date

PA, DEPT. OF CORRECTION
BUREAU OF COMPUTER SERVICES
REMOTE PRINT TIME 9:00

INMATE ACCOUNTS SYSTEM
PARTIAL ACCOUNT LISTING
FROM PURGE FILE

RUN IAS365
DATE 8/02/2000
PAGE 1

INMATE NUMBER	NAME LAST	FIRST	MI	STARTING BALANCE
EE5357	PETERSON	CHRISTOPHER	L	.00

BATCH #	DATE MO	TRANSACTION DESCRIPTION	TRANSACTION AMOUNT	BALANCE AFTER TRANSACTION
0	03-23-2000	00 OPEN NEW ACCOUNT 80 PITTSBURGH		
4759	03-27-2000	37 POSTAGE	-4.41	-4.41
0	03-31-2000	92 TRANSFER OUT PITTSBURGH		
0	03-31-2000	91 TRANSFER IN CAMP HILL		

BALANCE AFTER THESE TRANSACTIONS----->

-4.41

PA, DEPT. OF CORRECTION
BUREAU OF COMPUTER SERVICES
REMOTE PRINT TIME 9:00

INMATE ACCOUNTS SYSTEM
PARTIAL ACCOUNT LISTING
FROM ACTIVE FILE

RUN IAS365
DATE 8/02/2000
PAGE 1

INMATE NUMBER	NAME LAST	FIRST	MI	STARTING BALANCE
EE5357	PETERSON	CHRISTOPHER	L	-4.41

BATCH #	DATE MO DY YEAR	TRANSACTION DESCRIPTION	TRANSACTION AMOUNT	BALANCE AFTER TRANSACTION
5661	05-19-2000 38	INSIDE PURCHASES I D CARDS	-3.00	-7.41
5826	05-26-2000 37	POSTAGE 5/26/00	-.77	-8.18
6056	06-28-2000 37	POSTAGE DONE 6-27-00	-.99	-9.17
6114	07-07-2000 10	MAINTENANCE PAYROLL GROUP 1 6-1-00 TO 6-30-2000	19.44	10.27
8192	07-10-2000 32	CAM COMMISSARY FOR 7/10/2000	-4.69	5.58
6187	07-18-2000 10	MAINTENANCE PAYROLL VAN GROUP 1 7-14-2000	6.48	12.06
6187	07-18-2000 50	ACT 84 TRANSACTION * 1083-96 07/18/00	-1.30	10.76
0	07-18-2000 82	TRANSFER OUT CAMP HILL		
0	07-18-2000 81	TRANSFER IN ROCKVIEW		
8200	07-18-2000 32	ROC COMMISSARY FOR 7/19/2000	-4.86	5.90
8207	07-25-2000 32	ROC COMMISSARY FOR 7/26/2000	-5.50	.40
8214	08-01-2000 32	ROC COMMISSARY FOR 8/01/2000	-.38	.02
BALANCE AFTER THESE TRANSACTIONS-----> .02				

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

26/10
CHRISTOPHER LEROY PETERSON,)
Plaintiff,)
v.) Civil Action No. 00-1517
SCI CAMP HILL,)
Defendant.)
2) 9/

O R D E R

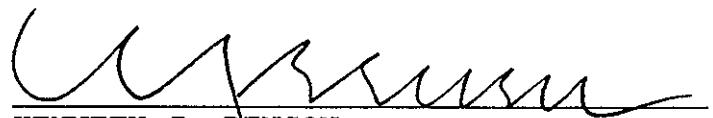
AND NOW, this 18th day of August, 2000, after the plaintiff presented a civil complaint for which the filing fee is \$150.00, and which he seeks leave to prosecute in forma pauperis,

IT IS ORDERED that leave to proceed in forma pauperis is GRANTED, and since the plaintiff does not possess sufficient funds to pay this fee, and it appearing that his average monthly deposit into his inmate account for the last five¹ months is \$1.03, and that his average monthly balance in that account for the past five months is \$-5.15, and that an initial partial filing fee of twenty percent (20%) of the greater of those two amounts, or \$.20 should be assessed against the plaintiff, and the Court further finding that requiring the plaintiff, whose current balance is \$.02, to contribute anything towards the filing fee at this time would create an injustice, the payment of the initial partial filing fee is held in abeyance;

¹ The materials submitted with plaintiff's application for leave to proceed in forma pauperis indicate he has been incarcerated only since March, 2000.

IT IS FURTHER ORDERED that the Clerk shall file the complaint without payment of an initial partial filing fee;

IT IS FURTHER ORDERED that the agency having custody of the plaintiff shall forward to the Clerk of Court payments from the prisoner's account in an amount of twenty percent (20%) of the preceding month's income credited to the prisoner's account each time the amount in the account exceeds \$10.00, until the full filing fee is paid.



KENNETH J. BENSON
CHIEF UNITED STATES MAGISTRATE JUDGE

cc: Christopher Leroy Peterson, EE-5357
SCI Rockview
Box A
Bellefonte, PA 16823
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Inmate Accounting Office
SCI Rockview
Box A
Bellefonte, PA 16823

Finance Section,
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CHRISTOPHER LEROY PETERSON,)
Plaintiff,)
v.) Civil Action No. 00-1517
SCI CAMP HILL,)
Defendant.)

NOTICE AND AUTHORIZATION OR WITHDRAWAL OF ACTION

AND NOW, this 18th day of August, 2000;

TO THE PLAINTIFF IN THE ABOVE ACTION:

YOU ARE HEREBY NOTIFIED that in order for your case to proceed it will be necessary for you to sign the AUTHORIZATION below. You must return the signed form to the Clerk of the United States District Court for the Western District of Pennsylvania within twenty (20) days of the date of this notice.

By signing the AUTHORIZATION and sending it to the Clerk, you will be agreeing to authorize the inmate account officer to make the remaining installment payments to the Clerk of Court until the full filing fee of \$150.00 is paid.

If the Clerk does not receive a copy of this Notice with the AUTHORIZATION signed by you within twenty (20) days, the court will conclude that you do not intend to proceed with your lawsuit and your action will be dismissed for failure to prosecute.

The Prison Litigation Reform Act of 1996, 28 U.S.C. §1915(g), provides that a prisoner may not bring a civil action

or appeal a judgment in a civil action in forma pauperis if the prisoner has, on three or more prior occasions while incarcerated, brought an action or appeal in a court of the United States that was dismissed on the grounds that it was frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury. If you elect to withdraw the present action it would not be counted as one of the three prior dismissals. You may wish to consider this provision in deciding whether to proceed with this lawsuit. If you do not wish to proceed with this lawsuit you should sign the WITHDRAWAL OF ACTION form below and send it to the Clerk of this court.



KENNETH J. BENSON
CHIEF UNITED STATES MAGISTRATE JUDGE

cc: Christopher Leroy Peterson, EE-5357
SCI Rockview
Box A
Bellefonte, PA 16823
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Inmate Accounting Office
SCI Rockview
Box A
Bellefonte, PA 16823

AUTHORIZATION

I, Christopher Leroy Peterson, EE-5357, hereby authorize the custodian of my inmate account to withdraw from my account and pay to the Clerk, United States District Court for the Western District of Pennsylvania monthly payments of twenty percent (20%) of the preceding month's income credited to my account and to forward payments from my account, each time the amount in my account exceeds \$10.00, to the Clerk, United States District Court, until the entire filing fee of \$150.00 for Civil Action No. 00-1517 has been paid.

PLAINTIFF'S SIGNATURE

DATE

WITHDRAWAL OF ACTION

I, Christopher Leroy Peterson, EE-5357, hereby Move to Withdraw this action.

PLAINTIFF'S SIGNATURE

DATE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

26/81

Name and address of Plaintiff:

Chris Topher Leroy Peterson
 328 mead ave Corry PA
 16407

00 1517

Full name, title, and business address
of each defendant in this action:

1. SCI Camp Hill

PO Box 200 Camp Hill PA
 17021-200

2. _____

(use additional sheets, if necessary.)

Number each defendant.)

Plaintiff brings this action against the above named and identified defendants on the following cause of action:

I. Where are you now confined? SCI Camp HillWhat sentence are you serving? 3-6 month 3-12 month 3-24 monthsWhat court imposed the sentence? Erie County, Pennsylvania

II. Previous Lawsuits

A. Describe any and all lawsuits in which you are a plaintiff which deal with the same facts involved in this action. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same outline.)

1. Parties to the previous lawsuit

Plaintiffs: NoneDefendants: None

2. Court (if federal court, name the district; if state court, name the county) and docket number.

None

3. Name of judge to whom case was assigned Judge Connors

4. Disposition (For example: Was the case dismissed? Was it appealed? Is it still pending?)
I'm at SCI Camp Hill

5. Approximate date of filing lawsuit MAY 23, 2000

6. Approximate date of disposition 6 months to 1 year

B. Prior disciplinary proceedings which deal with the same facts involved in this action:

Where? _____

When? _____

Result: _____

III. What federal law do you claim was violated? The 8th Amendment
CRUEL AND INHUMANE PUNISHMENT

IV. Statement of Claim

(State here as briefly as possible the facts of your case. Do not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Use as much space as you need. Attach extra sheet if necessary.)

A. Date of event: 4-9-00 Thru 4-26-00

B. Place of event: SCI Camp Hill

C. Persons involved--name each person and tell what that person did to you: Camp Hill put me in the hole for NOT giving a urine test I just could not go. They put me in a cell that was NOT able to live in. in the facts of there was (cock roaches) (ants) (mice) (the ~~floor~~ toilet leaked around the base) (the sink leaked) (the blankets never get washed) They gave me a scrub brush to mop the floor with) (there was plexy glass on the cell door where no air could get through) (no windows) (on hot days the cell smelled like raw sewage and wet dog) (they are also making me take mess I don't need)

v. Did the incident of which you complain occur in an institution or place of custody in this District? If so, where?

and answer the following questions:

A. Is there a prisoner grievance procedure in this institution?
Yes () No ()

B. Did you present the facts relating to your complaint in the state prisoner grievance procedure? Yes No ()

C. If your answer is YES.

1. What steps did you take? _____

2. What was the result? Refused To give me a grievance
TOTALLY DENIED GRIEVANCE FROM RHO OR ANYWHERE ELSE AT SCE CAMBRILL, PA 17001-0200
RESTRICTED HOUSING UNIT P.0.8.1N 200

D. If your answer is NO, explain why not: _____

E. If there is no prison grievance procedure in the institution, did you complain to prison authorities? Yes () No ()

F. If your answer is YES.

1. What steps did you take? _____

2. What was the result? _____

VI. Relief

State briefly exactly what you want the court to do for you. Make no legal arguments. Cite no cases or statutes.

1,000,000.00
I'm asking for \$ 1,000,000.00 for The violation of
my 8th amendment & CRIMINAL charges filed AGAINST DENT CORRECTIONAL
SCE CAMBRILL

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

MAY 23, 2000

(Date)

Chris Peterson
(Signature of Plaintiff)

26/8A

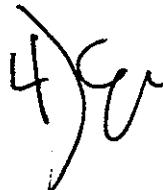
AUTHORIZATION

00-1517

I, Christopher Leroy Peterson, EE-5357, hereby authorize the custodian of my inmate account to withdraw from my account and pay to the Clerk, United States District Court for the Western District of Pennsylvania monthly payments of twenty percent (20%) of the preceding month's income credited to my account and to forward payments from my account, each time the amount in my account exceeds \$10.00, to the Clerk, United States District Court, until the entire filing fee of \$150.00 for Civil Action No. 00-1517 has been paid.



PLAINTIFF'S SIGNATURE


8-21-00

DATE

WITHDRAWAL OF ACTION

I, Christopher Leroy Peterson, EE-5357, hereby Move to Withdraw this action.

PLAINTIFF'S SIGNATURE

DATE

AUTHORIZATION

I, Christopher Leroy Peterson, EE-5357, hereby authorize the custodian of my inmate account to withdraw from my account and pay to the Clerk, United States District Court for the Western District of Pennsylvania monthly payments of twenty percent (20%) of the preceding month's income credited to my account and to forward payments from my account, each time the amount in my account exceeds \$10.00, to the Clerk, United States District Court, until the entire filing fee of \$150.00 for Civil Action No. 00-1517 has been paid.

Chris Peterson

PLAINTIFF'S SIGNATURE

8-21-00

DATE

WITHDRAWAL OF ACTION

I, Christopher Leroy Peterson, EE-5357, hereby Move to Withdraw this action.

PLAINTIFF'S SIGNATURE

DATE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

26/84
CHRISTOPHER LEROY PETERSON,)
Plaintiff,)
v.) Civil Action No. 00-1517
SCI CAMP HILL,)
Defendant.)
5/8

O R D E R

Plaintiff, Christopher Leroy Peterson, EE-5357, a prisoner at the State Correctional Institution Rockview at Bellefonte, Pennsylvania, having been granted leave to proceed in forma pauperis subject to the provisions of 28 U.S.C. §1915(b) (as amended April 26, 1996), which requires that prisoners pay an initial partial filing fee and the entire fee in installment payments; and the initial filing fee having been held in abeyance by order of August 18, 2000 (Docket #2); and the Clerk having been directed to file the complaint; and

Plaintiff having signed an AUTHORIZATION agreeing to: authorize the inmate account office to deduct from his inmate account twenty percent (20%) of each item of income on the date received, accrue these items and forward one payment per month of the amount accrued whenever the amount in his account exceeds \$10.00 to the Clerk, United States District Court, until the entire filing fee of \$150.00 has been paid;

PLAINTIFF IS ADVISED that at the conclusion of this lawsuit, if it should end with a result favorable to defendant(s),

judgment may be entered against plaintiff for all or some of the fees of the Clerk and Marshal and some or all of the costs incurred by defendant(s) in defending this action.

PLAINTIFF IS FURTHER ADVISED that Fed.R.Civ.P. 11 requires that any filing signed by any party must comply with certain standards. Among these is that statements or allegations of fact must be true or have evidentiary support. This requirement applies to the complaint which plaintiff has already submitted for filing as well as to any future filings and submissions by any party.

AND NOW, this 30th day of August, 2000;

IT IS HEREBY ORDERED that, in accordance with 28 U.S.C. §1915(b)(1) and (2), the inmate account officer at the State Correctional Institution Rockview at Bellefonte, Pennsylvania, shall continue to deduct from plaintiff's inmate account twenty percent (20%) of each item of income on the date received, accrue these items and forward one payment per month of the amount accrued to the Clerk, United States District Court for the Western District of Pennsylvania, whenever the amount in plaintiff's account exceeds \$10.00, until the entire filing fee of \$150.00 has been paid;

IT IS FURTHER ORDERED that the United States Marshal is directed to mail a copy of the complaint, notice of lawsuit and request for waiver of service of summons, and waiver, and this order to each defendant as directed by plaintiff. Costs shall be advanced by the United States. Defendants are requested to waive service pursuant to Rule 4(d).¹

¹ The Marshal will send the form Notice of Lawsuit and Request for Waiver of Service of Summons to each defendant.

IT IS FURTHER ORDERED that plaintiff provide the United States Marshal a separate "Process Receipt and Return" form (USM-285) for each defendant (unless he sent properly completed forms to the Clerk with the complaint). If plaintiff does not have sufficient copies of the form to prepare one for each defendant, he may obtain additional forms from the Clerk of Court. On this form he must give the full name and complete home address of each individual defendant. If plaintiff fails to give the Marshal correct instructions for mailing to any defendant, his claims against that defendant may be dismissed pursuant to Federal Rule of Civil Procedure 4(m). Plaintiff is further advised that no defendant is required to respond to the complaint until he has accepted a copy of the complaint from the Marshal and waived service, or has been served. Therefore, a motion for default cannot properly be filed unless the defendant has failed to file an answer, a motion to dismiss, or a motion for additional time to respond, within sixty (60) days after the Marshal's notice has been mailed, if service is waived pursuant to the notice, or twenty (20) days after being served.

The court has conducted an initial screening of the complaint pursuant to 28 U.S.C. §1915A, and it appears that the complaint does not suffer from any of the defects identified in Section 7 of the Civil Rights of Institutionalized Persons Act, as amended, 42 U.S.C. §1997e, or in 28 U.S.C. §1915A, and that plaintiff has a reasonable opportunity to prevail on the merits,

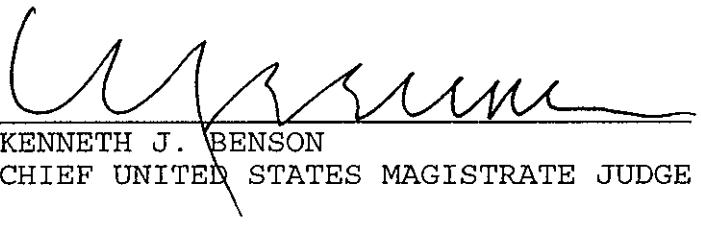
accordingly IT IS FURTHER ORDERED that defendant(s) is/are directed to file timely an appropriate pleading or motion in

response to the complaint, AND shall NOT waive filing a reply pursuant to 42 U.S.C. §1997e(g).

IT IS FURTHER ORDERED that plaintiff shall serve upon each defendant or, if appearance has been entered by counsel, upon their attorneys, a copy of every pleading or other document submitted for consideration by the court and shall include on the original document filed with the Clerk of Court a certificate stating the date a true and correct copy of the pleading or document was mailed to each defendant or his counsel. Any pleading or other document received by a district judge or magistrate judge which has not been filed with the Clerk or which fails to include a certificate of service shall be disregarded by the court.

IT IS FURTHER ORDERED that plaintiff shall immediately advise the court of any change in address. Failure to do so may result in dismissal for failure to prosecute if the court and other parties are unable to serve pleadings, orders and other documents upon plaintiff.

IT IS FURTHER ORDERED that the parties are allowed ten (10) days from this date to appeal this order to a district judge pursuant to Local Rule 72.1.3 B. Failure to appeal within ten (10) days may constitute waiver of the right to appeal.



KENNETH J. BENSON
CHIEF UNITED STATES MAGISTRATE JUDGE

cc: Christopher Leroy Peterson, EE-5357
SCI Rockview
Box A
Bellefonte, PA 16823
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Inmate Accounting Office
SCI Rockview
Box A
Bellefonte, PA 16823

Finance Section,
United States District Court

United States Marshal

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CHRISTOPHER LEROY PETERSON,
Plaintiff

v.

SCI CAMP HILL,

Defendant

Civil Action No. 00-1517

(Chief Judge Ziegler)
(Magistrate Judge Benson)

**DEFENDANT'S MOTION TO DISMISS THE COMPLAINT
OR TO TRANSFER THE ACTION FOR IMPROPER VENUE**

Pursuant to Rule 12(b)(3) & (6) of the Federal Rules of Civil Procedure, defendant, by its attorneys, moves the Court to dismiss the complaint or to transfer the action to the District Court for the Middle District of Pennsylvania. This motion is supported by the accompanying memorandum of law.

WHEREFORE, the complaint should be dismissed or, in the alternative, the action should be transferred to the Middle District of Pennsylvania.

Respectfully submitted,

D. MICHAEL FISHER
Attorney General

By: Seth A. Mendelsohn
SETH A. MENDELSON
Deputy Attorney General

By: Gregory R. Neuhauser
GREGORY R. NEUHAUSER
Senior Deputy Attorney General

SUSAN J. FORNEY
Chief Deputy Attorney General
Chief, Litigation Section

OFFICE OF ATTORNEY GENERAL
15th Floor, Strawberry Square
Harrisburg, PA 17120
717-787-8106

DATE: October 6, 2000

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

**CHRISTOPHER LEROY PETERSON,
Plaintiff**

Y

SCI CAMP HILL,

Defendant

Civil Action No. 00-1517
(Chief Judge Ziegler)
(Magistrate Judge Benson)

ORDER

, 2000, upon consideration of

defendant's motion, IT IS HEREBY ORDERED that this action is transferred to the United States District Court for the Middle District of Pennsylvania

BY THE COURT:

J.



U.S. Department of Justice

United States Attorney
Western District of Pennsylvania

:gyt

633 United States Post Office & Courthouse
Pittsburgh, Pennsylvania 15219

412/644-3500

October 10, 2000

James A. Drach
Clerk of Court
United States District Court
Western District of Pennsylvania
829 U.S. Post Office & Courthouse
7th Avenue and Grant Street
Pittsburgh, PA 15219

Re: Christopher Peterson v. SCI Camp Hill
Civil Action No. 00-1517

Dear Mr. Drach:

Enclosed are pleadings sent by the Office of Attorney General for filing in the above-captioned case, which were received in our office on October 10, 2000, and opened in error.

Very truly yours,

HARRY LITMAN
United States Attorney

Gail Y. Turner
GAIL Y. TURNER
Paralegal Specialist
Civil Division

Enclosures

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CHRISTOPHER LEROY PETERSON, :
Plaintiff :
v. : Civil Action No. 00-1517
SCI CAMP HILL, : (Chief Judge Ziegler)
Defendant : (Magistrate Judge Benson)

MEMORANDUM IN SUPPORT OF
DEFENDANT'S MOTION TO DISMISS THE COMPLAINT
OR TO TRANSFER THE ACTION FOR IMPROPER VENUE

STATEMENT OF THE CASE

This is a civil action for damages brought pursuant to the Civil Rights Act of 1871, 42 U.S.C. § 1983. Plaintiff is an inmate incarcerated at the State Correctional Institution at Rockview, Bellefonte, Pennsylvania ("SCI-Rockview"). Defendant is the State Correctional Institution at Camp Hill, Pennsylvania ("SCI-Camp Hill").

In his complaint, plaintiff alleges that his conditions of confinement at SCI-Camp Hill in April 2000 violated his Eighth Amendment right to freedom from cruel and unusual punishment.

He claims that his cell had insects and rodents in it, that the toilet and sink were leaky, that his blankets were never laundered, that there was a plexiglass shield on the cell door which restricted airflow to the cell, that the cell had offensive odors, and that he has been required to take medication he does not need. (Complaint, § IV).

The State Correctional Institution has moved to dismiss the complaint for failure to state a claim upon which relief may be granted and for improper venue. In the alternative, defendant moves the Court to transfer the action to the District Court for the Middle District of

Pennsylvania, the District in which SCI-Camp Hill is located. This memorandum is submitted in support of defendant's motion to dismiss or to transfer.

QUESTIONS PRESENTED

1. **Whether the complaint should be dismissed because the defendant is immune pursuant to the Eleventh Amendment to the Constitution and is not a "person" amenable to suit under 42 U.S.C. § 1983?**
2. **Whether the complaint should be dismissed or transferred for improper venue?**

ARGUMENT

I. THE COMPLAINT SHOULD BE DISMISSED BECAUSE THE DEFENDANT IS IMMUNE PURSUANT TO THE ELEVENTH AMENDMENT TO THE CONSTITUTION AND IS NOT A "PERSON" AMENABLE TO SUIT UNDER 42 U.S.C. § 1983.

Plaintiff has filed a complaint against the "State Correctional Institution at Camp Hill, Pennsylvania." Because the State Correctional Institution is a part of the Pennsylvania Department of Corrections which in turn is an agency of the Commonwealth of Pennsylvania, the defendant is immune from suit pursuant to the Eleventh Amendment to the Constitution. In addition, the defendant is not a "person" amenable to suit under 42 U.S.C. § 1983. Accordingly, plaintiff's complaint fails to state a claim upon which relief may be granted and it should be dismissed.

The United States Supreme Court consistently has interpreted the Eleventh Amendment to the Constitution to preclude suits against a state in federal court by citizens of that state or other states. Atascadero State Hospital v. Scanlon, 473 U.S. 234, 238 (1985); Pennhurst State School and Hospital v. Halderman, 465 U.S. 89, 98 (1984); Edelman v. Jordan, 415 U.S. 641,

662-663 (1974). The Eleventh Amendment's jurisdictional bar is not dependent upon the nature of the relief sought; it is equally applicable to suits seeking money damages, Edelman v. Jordan, as it is to suits seeking equitable relief. Alabama v. Pugh, 438 U.S. 781 (1978). While a state may consent to suit against it in federal court thereby waiving its immunity, Pennsylvania has not done so. In Laskaris v. Thornburgh, 661 F.2d 23, 25 (3d Cir. 1981), the Court recognized that pursuant to 42 Pa. C.S. § 8521(b), "Pennsylvania has specifically withheld consent." In the absence of consent, a suit against a state or one of its agencies is proscribed by the Eleventh Amendment. Pennhurst, 465 U.S. at 98.

The only named defendant in this action is the State Correctional Institution at Camp Hill, Pennsylvania. The Court may take judicial notice of the fact that the defendant is an institution operated by the Pennsylvania Department of Corrections which in turn is an agency of the Commonwealth of Pennsylvania. See Pa. Stat. Ann. tit. 71, § 61 (Purdon). As such, the defendant is immune from suit pursuant to the Eleventh Amendment. Pennhurst, supra.

Even if the Eleventh Amendment were not a bar, a civil rights claim could not be maintained against the State Correctional Institution because it is not a "person" amenable to suit under the Civil Rights Act. In Will v. Michigan Dept. of State Police, 491 U.S. 58, 65-66 (1989), the Supreme Court held that suit for a violation of one's constitutional rights may be maintained only against a "person" and a State or agency of a State is not a "person" amenable to suit under the Civil Rights Act.

Thus, plaintiff may not bring suit against the defendant and the complaint should be dismissed.

II. THE COMPLAINT SHOULD BE DISMISSED OR TRANSFERRED FOR IMPROPER VENUE.

In a civil action such as this case where jurisdiction is not premised solely upon diversity of citizenship, venue is proper in the district in which 1) any defendant resides, if all defendants reside in the same state; 2) a district in which a substantial part of the events or omissions giving rise to the claim occurred; or 3) a district in which any defendant may be found if there is no district in which the action otherwise may be brought. 28 U.S.C. § 1331(b). The sole defendant in this action is the State Correctional Institution at Camp Hill which is located in Cumberland County, Pennsylvania, in the Middle District of Pennsylvania. Venue thus does not lie in the Western District of Pennsylvania.

Where venue is improper, the Court "shall dismiss the case, or if it be in the interest of justice, transfer such case" to the appropriate district. 28 U.S.C. § 1406(a). This language strongly suggests that, when an action has been brought in the wrong district, the case should be dismissed unless the plaintiff demonstrates that justice requires a transfer. Coleman v. Crisp, 444 F.Supp. 31, 33 (W.D. Ok. 1977); Lowery v. Estelle, 533 F.2d 265, 267 (5th Cir. 1976).

Alternatively, the action should be transferred to the Middle District of Pennsylvania. 28 U.S.C. § 1404(a). It is within the Court's discretion to order transfer of a case for the convenience of the parties and witnesses if, on balance, convenience is strongly in favor of the defendants. Shutee v. Armco Steel Corp., 431 F.2d 11, 25 (3d Cir. 1970), cert. denied, 401 U.S. 910 (1971). The purpose of this provision is to prevent the waste of time, energy and resources and to protect litigants, witnesses and the public from unnecessary expense and inconvenience. See Pope v. Missouri Pac. Ry. Co., 446 F.Supp. 447 (W.D. Ok. 1978).

Protecting litigants, witnesses and the public from unnecessary expense and inconvenience, and avoiding a waste of time, energy and money thus are all relevant considerations for venue purposes. If the Court does not dismiss the action for improper venue, these factors establish that the action should be transferred to the Middle District of Pennsylvania. Plaintiff's claim solely concerns events at SCI-Camp Hill; if the claim is allowed to proceed, it is apparent that witnesses and documents from SCI-Camp Hill would be necessary to rebut plaintiff's allegations. Litigating this action in the District in which expenses may be minimized calls for transfer.

Accordingly, the complaint should be dismissed or transferred for improper venue.

CONCLUSION

For the above-stated reasons, the complaint should be dismissed or, in the alternative, the action should be transferred to the District Court for the Middle District of Pennsylvania.

Respectfully submitted,

D. MICHAEL FISHER
Attorney General

By: Seth A. Menдельsohn
SETH A. MENDELSON
Deputy Attorney General

By: Gregory R. Neuhauser
GREGORY R. NEUHAUSER
Senior Deputy Attorney General

SUSAN J. FORNEY
Chief Deputy Attorney General
Chief, Litigation Section

OFFICE OF ATTORNEY GENERAL
15th Floor, Strawberry Square
Harrisburg, PA 17120
717-787-8106

DATE: October 6, 2000

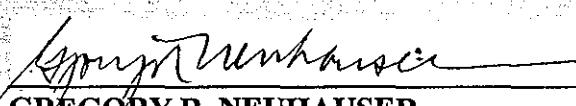
IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CHRISTOPHER LEROY PETERSON, :
Plaintiff :
: Civil Action No. 00-1517
v. :
: (Chief Judge Ziegler)
SCI CAMP HILL, : (Magistrate Judge Benson)
Defendant :
:

CERTIFICATE OF SERVICE

I, GREGORY R. NEUHAUSER, Senior Deputy Attorney General for the Commonwealth of Pennsylvania, Office of Attorney General, hereby certify that on October 6, 2000, I caused to be served a true and correct copy of the foregoing document Memorandum in Support of Defendant's Motion to Dismiss the Complaint or to Transfer the Action for Improper Venue by depositing it in the United States mail, first-class postage prepaid to the following:

Christopher Leroy Peterson, EE-5357
SCI-Rockview
Box A
Bellefonte, PA 16823-0820



GREGORY R. NEUHAUSER
Senior Deputy Attorney General

II. THE COMPLAINT SHOULD BE DISMISSED OR TRANSFERRED FOR IMPROPER VENUE.

In a civil action such as this case where jurisdiction is not premised solely upon diversity of citizenship, venue is proper in the district in which 1) any defendant resides, if all defendants reside in the same state; 2) a district in which a substantial part of the events or omissions giving rise to the claim occurred; or 3) a district in which any defendant may be found if there is no district in which the action otherwise may be brought. 28 U.S.C. § 1331(b). The sole defendant in this action is the State Correctional Institution at Camp Hill which is located in Cumberland County, Pennsylvania, in the Middle District of Pennsylvania. Venue thus does not lie in the Western District of Pennsylvania.

Where venue is improper, the Court "shall dismiss the case, or if it be in the interest of justice, transfer such case" to the appropriate district. 28 U.S.C. § 1406(a). This language strongly suggests that, when an action has been brought in the wrong district, the case should be dismissed unless the plaintiff demonstrates that justice requires a transfer. Coleman v. Crisp, 444 F.Supp. 31, 33 (W.D. Ok. 1977); Lowery v. Estelle, 533 F.2d 265, 267 (5th Cir. 1976).

Alternatively, the action should be transferred to the Middle District of Pennsylvania. 28 U.S.C. § 1404(a). It is within the Court's discretion to order transfer of a case for the convenience of the parties and witnesses if, on balance, convenience is strongly in favor of the defendants. Shuttee v. Armco Steel Corp., 431 F.2d 11, 25 (3d Cir. 1970), cert. denied, 401 U.S. 910 (1971). The purpose of this provision is to prevent the waste of time, energy and resources and to protect litigants, witnesses and the public from unnecessary expense and inconvenience. See Pope v. Missouri Pac. Ry. Co., 446 F.Supp. 447 (W.D. Ok. 1978).

Protecting litigants, witnesses and the public from unnecessary expense and inconvenience, and avoiding a waste of time, energy and money thus are all relevant considerations for venue purposes. If the Court does not dismiss the action for improper venue, these factors establish that the action should be transferred to the Middle District of Pennsylvania. Plaintiff's claim solely concerns events at SCI-Camp Hill; if the claim is allowed to proceed, it is apparent that witnesses and documents from SCI-Camp Hill would be necessary to rebut plaintiff's allegations. Litigating this action in the District in which expenses may be minimized calls for transfer.

Accordingly, the complaint should be dismissed or transferred for improper venue.

CONCLUSION

For the above-stated reasons, the complaint should be dismissed or, in the alternative, the action should be transferred to the District Court for the Middle District of Pennsylvania.

Respectfully submitted,

D. MICHAEL FISHER
Attorney General

By: Seth A. Mendelsohn
SETH A. MENDELSON
Deputy Attorney General

By: Gregory R. Neuhauser
GREGORY R. NEUHAUSER
Senior Deputy Attorney General

SUSAN J. FORNEY
Chief Deputy Attorney General
Chief, Litigation Section

OFFICE OF ATTORNEY GENERAL
15th Floor, Strawberry Square
Harrisburg, PA 17120
717-787-8106

DATE: October 6, 2000

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CHRISTOPHER LEROY PETERSON, :
Plaintiff :
: Civil Action No. 00-1517
v. :
: (Chief Judge Ziegler)
SCI CAMP HILL, : (Magistrate Judge Benson)
Defendant :
:

CERTIFICATE OF SERVICE

I, GREGORY R. NEUHAUSER, Senior Deputy Attorney General for the Commonwealth of Pennsylvania, Office of Attorney General, hereby certify that on October 6, 2000, I caused to be served a true and correct copy of the foregoing document Memorandum in Support of Defendant's Motion to Dismiss the Complaint or to Transfer the Action for Improper Venue by depositing it in the United States mail, first-class postage prepaid to the following:

Christopher Leroy Peterson, EE-5357
SCI-Rockview
Box A
Bellevue, PA 16823-0820



GREGORY R. NEUHAUSER
Senior Deputy Attorney General

26/BA

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CHRISTOPHER PETERSON,

* CIVIL ACTION NO. 00-1517

PLAINTIFF

*

*

*

VS.

SCI CAMP HILL

* (Chief Judge Ziegler)

DEFENDANT

* (Magistrate Judge Benson)

PLAINTIFF'S ANSWER TO DEFENDANT'S MOTION TO
DISMISS THE COMPLAINT OR TO TRANSFER
THE ACTION FOR IMPROPER VENUE

To the Honorable Judges of above said courts.

AND NOW COMES, Christopher Peterson, Pro Se, and respectfully represents as follows:

1. That plaintiff specifically denies all statements by defendant that are contrary to plaintiff's pleadings to date.

2. That the plaintiff is no paralegal, is not an attorney, and has never had any legal education.

Its been long held by the courts, that pro se pleadings are held to less stringent standards than pleadings drafted by lawyers.

3. That given the eighth amendment violations as set forth in plaintiff's complaint, it is clearly in the best interest of justice to transfer this matter to the middle district of Pennsylvania.

4. That this court, also in the best interest of justice should allow plaintiff to amend his original complaint with specific defendants.

CONCLUSION

Given the severity of the eighth amendment violations as outset by plaintiff, if dismissed on procedural grounds, noting again, plaintiff has no formal legal education, would be a "black eye for our American Justice System.

I hereby verify that the statements herein are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of perjury.

WHEREFORE, Plaintiff Prays these Honorable Courts to deny defendant's motion to dismiss. And allow plaintiff to amend the caption to include specific defendants. And transfer the case to the proper venue of the Middle District.

RESPECTFULLY SUBMITTED,

Chris Peterson

Christopher Peterson, Pro Se
EE-5357, Box A
Bellefonte, PA 16823

Date: 10-10-00

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CHRISTOPHER PETERSON,
PLAINTIFF

* CIVIL ACTION NO. 00-1517

VS.

*

*

*

SCI CAMP HILL
DEFENDANT

* (Chief Judge Ziegler)

* (Magistrate Judge Benson)

CERTIFICATE OF SERVICE

I hereby certify this day I am serving the foregoing document, Plaintiff's Answer To Defendant's Motion To Dismiss The Complaint Or To Transfer The Action For Improper Venue, upon the person below, first class, postage paid, U.S. mail:

Gregory R. Neuhauser, Esq.
Senior Deputy Attorney General
Office Of The Attorney General
15th. Floor, Strawberry Square
Harrisburg, PA 17120



Christopher Peterson, Pro Se
EE-5357, Box A
Bellefonte, PA 16823

Date: 10-10-00

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CHRISTOPHER LEROY PETERSON,	:
Plaintiff	:
v.	:
SCI CAMP HILL,	:
Defendant	:

Civil Action No. 00-1517

(Chief Judge Ziegler)

(Magistrate Judge Benson)

**DEFENDANT'S MOTION TO DISMISS THE COMPLAINT
OR TO TRANSFER THE ACTION FOR IMPROPER VENUE**

Pursuant to Rule 12(b)(3) & (6) of the Federal Rules of Civil Procedure, defendant, by its attorneys, moves the Court to dismiss the complaint or to transfer the action to the District Court for the Middle District of Pennsylvania. This motion is supported by the accompanying memorandum of law.

WHEREFORE, the complaint should be dismissed or, in the alternative, the action should be transferred to the Middle District of Pennsylvania.

Respectfully submitted,

D. MICHAEL FISHER
Attorney General

By:

Seth A. Mendelsohn
SETH A. MENDELSON
Deputy Attorney General

By:

Gregory R. Neuhauser
GREGORY R. NEUHAUSER
Senior Deputy Attorney General

SUSAN J. FORNEY
Chief Deputy Attorney General
Chief, Litigation Section

OFFICE OF ATTORNEY GENERAL
15th Floor, Strawberry Square
Harrisburg, PA 17120
717-787-8106

DATE: October 6, 2000

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CHRISTOPHER LEROY PETERSON,
Plaintiff

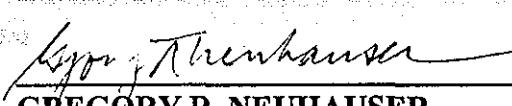
v.
SCI CAMP HILL,
Defendant

:
: Civil Action No. 00-1517
: (Chief Judge Ziegler)
: (Magistrate Judge Benson)
:

CERTIFICATE OF SERVICE

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Christopher Leroy Peterson, EE-5357
SCI-Rockview
Box A
Bellefonte, PA 16823-0820



GREGORY R. NEUHAUSER
Senior Deputy Attorney General

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CHRISTOPHER LEROY PETERSON, :
Plaintiff :
v. :
: Civil Action No. 00-1517
SCI CAMP HILL, :
Defendant :
: (Chief Judge Ziegler)
: (Magistrate Judge Benson)

ORDER

defendant's motion to dismiss or to transfer for improper venue, IT IS HEREBY ORDERED that the complaint is DISMISSED and the Clerk is directed to close the file in this case.

BY THE COURT:

J.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CHRISTOPHER LEROY PETERSON, :
Plaintiff :
v. : Civil Action No. 00-1517
SCI CAMP HILL, : (Chief Judge Ziegler)
Defendant : (Magistrate Judge Benson)

ORDER

AND NOW, this day of , 2000, upon consideration of defendant's motion, IT IS HEREBY ORDERED that this action is transferred to the United States District Court for the Middle District of Pennsylvania.

BY THE COURT:

J.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CHRISTOPHER LEROY PETERSON,	:	
Plaintiff	:	
	:	Civil Action No. 00-1517
	:	
SCI CAMP HILL,	:	(Chief Judge Ziegler)
Defendant	:	(Magistrate Judge Benson)
	:	

**MEMORANDUM IN SUPPORT OF
DEFENDANT'S MOTION TO DISMISS THE COMPLAINT
OR TO TRANSFER THE ACTION FOR IMPROPER VENUE**

STATEMENT OF THE CASE

This is a civil action for damages brought pursuant to the Civil Rights Act of 1871, 42 U.S.C. § 1983. Plaintiff is an inmate incarcerated at the State Correctional Institution at Rockview, Bellefonte, Pennsylvania ("SCI-Rockview"). Defendant is the State Correctional Institution at Camp Hill, Pennsylvania ("SCI-Camp Hill").

In his complaint, plaintiff alleges that his conditions of confinement at SCI-Camp Hill in April 2000 violated his Eighth Amendment right to freedom from cruel and unusual punishment. He claims that his cell had insects and rodents in it, that the toilet and sink were leaky, that his blankets were never laundered, that there was a plexiglass shield on the cell door which restricted airflow to the cell, that the cell had offensive odors, and that he has been required to take medication he does not need. (Complaint, § IV).

The State Correctional Institution has moved to dismiss the complaint for failure to state a claim upon which relief may be granted and for improper venue. In the alternative, defendant moves the Court to transfer the action to the District Court for the Middle District of

Pennsylvania, the District in which SCI-Camp Hill is located. This memorandum is submitted in support of defendant's motion to dismiss or to transfer.

QUESTIONS PRESENTED

1. Whether the complaint should be dismissed because the defendant is immune pursuant to the Eleventh Amendment to the Constitution and is not a "person" amenable to suit under 42 U.S.C. § 1983?
2. Whether the complaint should be dismissed or transferred for improper venue?

ARGUMENT

I. THE COMPLAINT SHOULD BE DISMISSED BECAUSE THE DEFENDANT IS IMMUNE PURSUANT TO THE ELEVENTH AMENDMENT TO THE CONSTITUTION AND IS NOT A "PERSON" AMENABLE TO SUIT UNDER 42 U.S.C. § 1983.

Plaintiff has filed a complaint against the "State Correctional Institution at Camp Hill, Pennsylvania." Because the State Correctional Institution is a part of the Pennsylvania Department of Corrections which in turn is an agency of the Commonwealth of Pennsylvania, the defendant is immune from suit pursuant to the Eleventh Amendment to the Constitution. In addition, the defendant is not a "person" amenable to suit under 42 U.S.C. § 1983. Accordingly, plaintiff's complaint fails to state a claim upon which relief may be granted and it should be dismissed.

The United States Supreme Court consistently has interpreted the Eleventh Amendment to the Constitution to preclude suits against a state in federal court by citizens of that state or other states. Atascadero State Hospital v. Scanlon, 473 U.S. 234, 238 (1985); Pennhurst State School and Hospital v. Halderman, 465 U.S. 89, 98 (1984); Edelman v. Jordan, 415 U.S. 641,

662-663 (1974). The Eleventh Amendment's jurisdictional bar is not dependent upon the nature of the relief sought; it is equally applicable to suits seeking money damages, Edelman v. Jordan, as it is to suits seeking equitable relief. Alabama v. Pugh, 438 U.S. 781 (1978). While a state may consent to suit against it in federal court thereby waiving its immunity, Pennsylvania has not done so. In Laskaris v. Thornburgh, 661 F.2d 23, 25 (3d Cir. 1981), the Court recognized that pursuant to 42 Pa. C.S. § 8521(b), "Pennsylvania has specifically withheld consent." In the absence of consent, a suit against a state or one of its agencies is proscribed by the Eleventh Amendment. Pennhurst, 465 U.S. at 98.

The only named defendant in this action is the State Correctional Institution at Camp Hill, Pennsylvania. The Court may take judicial notice of the fact that the defendant is an institution operated by the Pennsylvania Department of Corrections which in turn is an agency of the Commonwealth of Pennsylvania. See Pa. Stat. Ann. tit. 71, § 61 (Purdon). As such, the defendant is immune from suit pursuant to the Eleventh Amendment. Pennhurst, supra.

Even if the Eleventh Amendment were not a bar, a civil rights claim could not be maintained against the State Correctional Institution because it is not a "person" amenable to suit under the Civil Rights Act. In Will v. Michigan Dept. of State Police, 491 U.S. 58, 65-66 (1989), the Supreme Court held that suit for a violation of one's constitutional rights may be maintained only against a "person" and a State or agency of a State is not a "person" amenable to suit under the Civil Rights Act.

Thus, plaintiff may not bring suit against the defendant and the complaint should be dismissed.

II. THE COMPLAINT SHOULD BE DISMISSED OR TRANSFERRED FOR IMPROPER VENUE.

In a civil action such as this case where jurisdiction is not premised solely upon diversity of citizenship, venue is proper in the district in which 1) any defendant resides, if all defendants reside in the same state; 2) a district in which a substantial part of the events or omissions giving rise to the claim occurred; or 3) a district in which any defendant may be found if there is no district in which the action otherwise may be brought. 28 U.S.C. § 1331(b). The sole defendant in this action is the State Correctional Institution at Camp Hill which is located in Cumberland County, Pennsylvania, in the Middle District of Pennsylvania. Venue thus does not lie in the Western District of Pennsylvania.

Where venue is improper, the Court "shall dismiss the case, or if it be in the interest of justice, transfer such case" to the appropriate district. 28 U.S.C. § 1406(a). This language strongly suggests that, when an action has been brought in the wrong district, the case should be dismissed unless the plaintiff demonstrates that justice requires a transfer. Coleman v. Crisp, 444 F.Supp. 31, 33 (W.D. Ok. 1977); Lowery v. Estelle, 533 F.2d 265, 267 (5th Cir. 1976).

Alternatively, the action should be transferred to the Middle District of Pennsylvania. 28 U.S.C. § 1404(a). It is within the Court's discretion to order transfer of a case for the convenience of the parties and witnesses if, on balance, convenience is strongly in favor of the defendants. Shutee v. Armco Steel Corp., 431 F.2d 11, 25 (3d Cir. 1970), cert. denied, 401 U.S. 910 (1971). The purpose of this provision is to prevent the waste of time, energy and resources and to protect litigants, witnesses and the public from unnecessary expense and inconvenience. See Pope v. Missouri Pac. Ry. Co., 446 F.Supp. 447 (W.D. Ok. 1978).

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Accordingly, the complaint should be dismissed or transferred for improper venue.

CONCLUSION

For the above-stated reasons, the complaint should be dismissed or, in the alternative, the action should be transferred to the District Court for the Middle District of Pennsylvania.

Respectfully submitted,

D. MICHAEL FISHER
Attorney General

By: Seeth A. Mendelsohn
SETH A. MENDELSON
Deputy Attorney General

By: Gregory R. Neuhäuser
GREGORY R. NEUHAUSER
Senior Deputy Attorney General

SUSAN J. FORNEY
Chief Deputy Attorney General
Chief, Litigation Section

OFFICE OF ATTORNEY GENERAL
15th Floor, Strawberry Square
Harrisburg, PA 17120
717-787-8106

DATE: October 6, 2000

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CHRISTOPHER LEROY PETERSON, :
Plaintiff :
: Civil Action No. 00-1517
v. :
: (Chief Judge Ziegler)
SCI CAMP HILL, : (Magistrate Judge Benson)
Defendant :
:

CERTIFICATE OF SERVICE

I, GREGORY R. NEUHAUSER, Senior Deputy Attorney General for the Commonwealth of Pennsylvania, Office of Attorney General, hereby certify that on October 6, 2000, I caused to be served a true and correct copy of the foregoing document **Memorandum in Support of Defendant's Motion to Dismiss the Complaint or to Transfer the Action for Improper Venue** by depositing it in the United States mail, first-class postage prepaid to the following:

Christopher Leroy Peterson, EE-5357
SCI-Rockview
Box A
Bellefonte, PA 16823-0820



GREGORY R. NEUHAUSER
Senior Deputy Attorney General

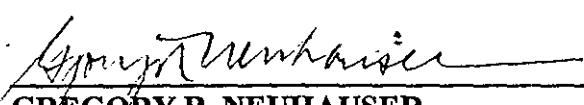
IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CHRISTOPHER LEROY PETERSON, :
Plaintiff :
: Civil Action No. 00-1517
v. :
: (Chief Judge Ziegler)
SCI CAMP HILL, : (Magistrate Judge Benson)
Defendant :
:

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GREGORY R. NEUHAUSER
Senior Deputy Attorney General

U.S. Department of Justice
United States Marshals Service

PROCESS RECEIPT AND RETURN

See Instructions for "Service of Process by the U.S. Marshal" on the reverse of this form.

PLAINTIFF

Chris Peterson

COURT CASE NUMBER

00 1517

DEFENDANT

Camp Hill S.C.I.

TYPE OF PROCESS

ORDER

SERVE

NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN



ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code)

AT

SCI Camp Hill PO Box 200 Camp Hill PA

17001-200

SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW:

CHRISTOPHER LEROY PETERSON

PO Box 200
SCI-CAMP HILL, PA 17001-0200

Block 104 cell location EE 5357 B2-94

Number of process to be served with this Form - 285

UNKNOWN

Number of parties to be served in this case

UNKNOWN

Check for service on U.S.A.



SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE (Include Business and Alternate Addresses, All Telephone Numbers, and Estimated Times Available For Service):

Fold

Signature of Attorney or other Originator requesting service on behalf of:

PLAINTIFF
 DEFENDANT

TELEPHONE NUMBER

DATE

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY — DO NOT WRITE BELOW THIS LINE

I acknowledge receipt for the total number of process indicated. (Sign only first USM 285 if more than one USM 285 is submitted)	Total Process	District of Origin No. _____	District to Serve No. _____	Signature of Authorized USMS Deputy or Clerk	Date
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I hereby certify and return that I have personally served, have legal evidence of service, have executed as shown in "Remarks", the process described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., shown at the address inserted below.

I hereby certify and return that I am unable to locate the individual, company, corporation, etc., named above (See remarks below)

Name and title of individual served (if not shown above)

A person of suitable age and discretion then residing in the defendant's usual place of abode.

Address (complete only if different than shown above)

Date of Service
9/29/00

Time

am

pm

Signature of U.S. Marshal or Deputy

Service Fee <i>100</i>	Total Mileage Charges (including endeavors) <i>320</i>	Forwarding Fee <i>320</i>	Total Charges <i>920</i>	Advance Deposits	Amount owed to U.S. Marshal or <i>920</i>	Amount of Refund
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REMARKS:

WAIVER OF SERVICE OF SUMMONS

TO: United States Marshal's Service

I acknowledge receipt of your request that I waive service of a summons in the action of Peterson vs S.C.I. Camp Hill which is case number CA-00-1517 in the United States District Court for the Western District of Pennsylvania. I have also received a copy of the complaint in the action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgement may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served upon you within 30 days after 09/12/00 (date request was sent), or within 60 days after that date if the request was sent outside the United States.

9/27/00

DATE

GREGORY NEUHAUSER
Signature

Printed/typed name:

GREGORY R. NEUHAUSER

Title if any:

SENIOR DEPUTY ATTORNEY GENERAL

Counsel For:

DEFENDANT, SCI-CAMP HILL

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

24
BA

CHRISTOPHER LEROY PETERSON,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 00-1517
)	JUDGE ZIEGLER
SCI CAMP HILL,)	MAGISTRATE JUDGE BENSON
)	
Defendant.)	

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION10
KSA**I. RECOMMENDATION**

It is respectfully recommended that defendant's motion to dismiss the complaint or to transfer the action for improper venue (Docket No. 7) be denied to the extent that it seeks dismissal of the complaint and granted to the extent that it seeks transfer of this action to the United States District Court for the Middle District of Pennsylvania under 28 U.S.C. §1404(a).

II. REPORT

Plaintiff, Christopher Leroy Peterson, an inmate formerly in custody at the State Correctional Institution at Camp Hill, Pennsylvania, now housed at the State Correctional Institution Rockview at Bellefonte, Pennsylvania, commenced this action pursuant to the Civil Rights Act of 1871, 42 U.S.C. §1983. In his complaint, plaintiff alleges that the conditions of his confinement in the restricted housing unit at SCI-Camp Hill violated his rights as protected by the Eighth Amendment of the United States Consti-

tution. Specifically, he alleges that there were cockroaches, mice and ants in his cell, the toilet and sink leaked, plexiglass on the cell door prohibited air circulation or ventilation, and his blankets never were washed. He also complains that he was required to take unnecessary medication. In response to plaintiff's complaint, the Commonwealth of Pennsylvania filed a motion to dismiss the complaint on the basis of sovereign immunity or to transfer the action for improper venue. For the reasons set out below, this action should be transferred to the United States District Court for the Middle District of Pennsylvania.

A. Sovereign Immunity

Defendant asserts that plaintiff's action should be dismissed on the basis of sovereign immunity. Defendant argues that the Eleventh Amendment to the United States Constitution grants it immunity from plaintiff's claims. The Eleventh Amendment provides as follows.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

U.S. CONST. AMEND. XI.

The Eleventh Amendment bars civil rights actions in federal court where the suit is brought by a private party against a state, or agencies or departments created by the state that have no existence apart from the state. Alabama v. Pugh, 438 U.S. 781, 782 (1978); Laskaris v. Thornburgh, 661 F.2d 23, 25 (3d Cir. 1981),

cert. denied, 469 U.S. 886 (1984). This grant of sovereign immunity extends to suits brought by citizens of the defendant state as well. Pennhurst State School & Hospital v. Halderman, 465 U.S. 89, 100 (1984). This jurisdictional bar applies regardless of the nature of the relief sought by an individual against a State. *Id.*¹

Defendant in the present action is identified as SCI Camp Hill. SCI-Camp Hill is a Pennsylvania correctional institution within the Pennsylvania Department of Corrections (DOC). DOC is a Pennsylvania agency that has no existence apart from the state. Accordingly, DOC benefits from the grant of sovereign immunity provided for under the Eleventh Amendment.

Nonetheless, a state may waive its immunity under the Eleventh Amendment either by state statute or constitutional provision. To constitute a waiver of Eleventh Amendment immunity, the state statute or constitutional provision must specify the state's intention to subject itself to suit in federal court. Atascadero State Hospital v. Scanlon, 473 U.S. 234, 241 (1985). Pennsylvania, however, has not waived its sovereign immunity under the Eleventh Amendment. In fact, Pennsylvania specifically reserved its immunity against federal suits in 42 Pa. Cons. Stat. Ann. §8521(b), which provides that "[n]othing contained in this subchapter shall be construed to waive the immunity of the Commonwealth from suit in Federal courts guaranteed by the Eleventh Amendment to the Constit-

¹ In Edelman v. Jordan, 415 U.S. 651 (1974), the Supreme Court held that when a plaintiff sues a state official alleging a violation of federal law, the federal court may award an injunction that governs the official's future conduct, but not one that awards retroactive monetary relief.

tution of the United States." Nothing in §1983 overrides the state immunity otherwise protected under the Eleventh Amendment. Will v. Michigan Dept. of State Police, 491 U.S. 58, 65-71 (1989). Thus, plaintiff may not maintain an action under 42 U.S.C. §1983 against SCI-Camp Hill, which is part of the DOC. Accord MOVE Organization v. U.S. Dept. of Justice, 555 F.Supp. 684 (E.D.Pa. 1983) (action against DOC dismissed under Eleventh Amendment).

Notwithstanding, in his answer to defendant's motion, plaintiff requests that his action be transferred to the United States District Court for the Middle District of Pennsylvania and that he be allowed to amend his complaint to identify specific defendants. In so arguing, plaintiff relies on defendant's motion for transfer of this action to the Middle District of Pennsylvania.

Plaintiff's action is a federal claim under 42 U.S.C. §1983. Because 42 U.S.C. §1983 contains no specific venue provision, the general venue requirements of 28 U.S.C. §1331 are applicable to this suit. See Urrutia v. Harrisburg County Police Department, 91 F.3d 451, 462 (3d Cir. 1996); Buhl v. Jeffes, 435 F.Supp. 1149 (M.D.Pa. 1977). The applicable section is 28 U.S.C. §1331(b), which provides as follows.

(b) A civil action wherein jurisdiction is not founded solely on diversity of citizenship may, except as otherwise provided by law, be brought only in (1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant may be

found, if there is no district in which the action may otherwise be brought.

In the case at bar, defendant argues that venue in this district is improper because the sole defendant, SCI-Camp Hill, is located within the Middle District. Thus, defendant seeks transfer of this action under 28 U.S.C. §1406(a), which allows a district court, in the interest of justice, to transfer a case filed in the improper district to any district in which it could have been brought. In the alternative, defendant seeks to transfer the action under 28 U.S.C. §1404(a), which provides that, "[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." Although a transfer under section 1404(a) need not be predicated on improper venue in the first instance, the facts of each case must be examined prior to any decision on whether transfer should be ordered. Starnes v. McGuire, 512 F.2d 918, 925 (D.C. Cir. 1976) (citing VanDusen v. Barrack, 376 U.S. 612, 622 (1964)). Transfer under section 1404(a) must be justified by particular circumstances that render the transferor forum inappropriate by reference to the considerations specified in the statute. Starnes, *supra*.

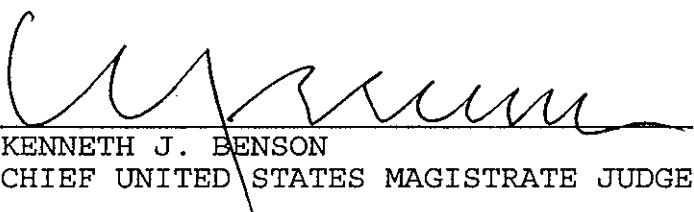
Transfer is proper under section 1404(a) in that plaintiff resides in the Middle District at SCI-Rockview, defendant Camp Hill is in the Middle District, and it is fair to assume that the individuals likely to be named by plaintiff as additional defendants, as employees of SCI-Camp Hill, also will reside in the Middle District of Pennsylvania. In addition, it is likely that any poten-

tial witnesses are located within the Middle District, as will be any documentary or other evidence. As such, it appears that it is in the interest of justice to transfer this action to the United States District Court for the Middle District of Pennsylvania under 28 U.S.C. §1404(a).

III. CONCLUSION

Wherefore, it is respectfully recommended that defendant's motion to dismiss the complaint or to transfer the action for improper venue (Docket No. 7) be denied to the extent that it seeks dismissal of the complaint and granted to the extent that it seeks transfer of this action to the United States District Court for the Middle District of Pennsylvania under 28 U.S.C. §1404(a).

In accordance with the Magistrates Act, 28 U.S.C. §636(b)(1)(B) and (C), and Local Rule 72.1.4 B, the parties are allowed ten (10) days from the date of service to file written objections to this report. Any party opposing the objections shall have seven (7) days from the date of service of objections to respond thereto. Failure to timely file objections may constitute a waiver of any appellate rights.



KENNETH J. BENSON
CHIEF UNITED STATES MAGISTRATE JUDGE

Dated: May 7, 2001

cc: Honorable Donald E. Ziegler
United States District Judge

Christopher Leroy Peterson, EE-5357
SCI Rockview
Box A
Bellefonte, PA 16823
CERTIFIED MAIL
RETURN RECEIPT REQUESTED

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Deputy Attorney General
Gregory R. Neuhauser, Esquire
Senior Deputy Attorney General
Office of the Attorney General
15th Floor, Strawberry Square
Harrisburg, PA 17120